

analogy of law that he cannot, for he could not comprise the legal of the posterior apprising, because the time of the leading of his comprising it was not then in being, it was a nonens. *Vide Dury, 18th November, 1624, Kincaid and Haliburton.*

Cujace, *ad Titulum C. Etiam ob chirographariam pecuniam pignus tenere posse*, affirms from Accursius, and the laws there cited, that *primus creditor potest offerre debitum secundo.* *Vide February, 1680.*

To the argument for the first opinion it may be answered, he has all the right was standing in his debtor's person: but, *ita est*, this was not a right competent to the debtor then, because the second comprising was not then led, and so could not be carried with the first apprising. It may be replied, that the debtor had the power to pay that debt, whether personal or real, as personally bound for it, (if so be it was contracted before the denunciation of the first comprising.) *ergo idem jus competet* to the first appraiser. *2do*, All right that accresces to the debtor becomes the first comprising's; *ergo, ex post facto*, this posterior right of reversion becomes his also. It may be duplied, that a comprising being a real right, will not draw, carry, nor affect the power and faculty to pay personal sums, seeing that is moveable. And for the accrescing, since all the favour indulged by the law to second comprisingers that are not within year and day, (and before the act of Parliament 1661, whether he was within year and day or not,) is allenarly the right of redeeming the prior apprisings; why shall this be communicated to one who has far more considerable benefits, viz. the full right of property if the legal expire? And yet I cannot see how the second appriser should refuse payment; that purging his damage and interest, *cum omni causa.*

*Vide supra, No. 154, [February 25, 1671,] where it is subtilly debated, if a liferent can be comprised, or an apprising not yet led be disponded. See Hope's Compend. cap. 10, Of Comprisings, pagina 49.*

*Advocates' MS. No. 454. folio 240.*

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1676. *February.* CAMPBELL *against* BLAICKWOOD.

ONE Campbell pursues Blaickwood in Awell for spulyie. His defence is, lawfully poinded. ANSWERED,—The execution of poinding is null, because, *1mo*, Only subscribed by the initial letters of the officer poinder his name. *2do*, It is apprised at the wrong place, and not at the market-cross of the jurisdiction where the lands lie of which the poind was taken. *3tio*, It is but an informal minute; not bearing the names of the apprisers at the market-cross, nor any offer back of the goods to the party, nor that there was any apprising of them on the ground of the lands, as ought to have been done. REPLIED,—The initial letters are sufficient, because it is offered to be proven that it is his usual way of subscribing: which was found relevant by the Lords. See the like in *Dury, 20th January, 1631, Houston contra Houston.* Denied the second: whereon it was admitted to the pursuer's probation. As to the third, offered to get an extended execution of poinding at which they would abide as true in all the formalities thereof: which the Lords allowed, being to avoid a spulyie. See the information of this cause beside me.

*Advocates' MS. No. 465, § 1, folio 240.*